Supreme Court, U.S.
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NO.
09-556

IN

SUPREME COURT OF THE UNITED STATES

BRIAN SCHREINER
Petitioner

V

KRISTI EWING and the STATE OF WASHINGTON
Respondents

On Petition For Writ Of Certiorari
To The Supreme Court For The
STATE OF WASHINGTON

PETITION FOR WRIT OF CERTIORARI

Brian James; Schreiner
c/o 21702 8th Pl. W.
Bothell, WA [98021]
425-343-3844

QUESTIONS PRESENTED FOR REVIEW

1. Did the trial court violate Schreiner's constitutional right to due process and his right to be heard?

2. Did the State violate Schreiner's constitutional right to equal protection under the law by refusing to vacate a void judgment?

3. Is the 2002 child support and parenting plan judgment void?

4. How can the State force Schreiner to pay child support and subsequently prosecute Schreiner for a modification of support when the trial court ruled Schreiner did not have standing?

5. If Schreiner does not have standing as the parent, how can the State have standing?

6. Did the State violate Schreiner's constitutional right to due process and equal protection under the law by denying him his right to trial after arbitration?

7. Does the State have authority to manifestly appear in every action for child support?

8. Did the State have authority to prosecute the child support modification action?

9. Does the term "non-custodial" as used in dependency statutes apply in like terms to common dissolution actions to quantify or qualify the intent of Congressional and Legislative enactments for public assistance?

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OPINION BELOW

The State court of appeals decision, review denied, is unpublished and set out in full at appendix.

BASIS FOR JURISDICTION

The State court of last resort issued an order denying review on June 03, 2009. This Court has jurisdiction through 28 USC 1257.

FEDERAL AUTHORITY

The Constitution of the United States, Art. III §2 JURISDICTION. The judicial power shall extend to all cases in law and equity, Arising under this constitution, the laws of the United States...to controversies... between a state, or the citizens thereof, and foreign states, citizens or subjects.

Art. IV §1. FAITH AND CREDIT AMONG STATES
Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings, of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof.

AMMENDMENT XIV §1 CITIZENSHIP RIGHTS NOT TO BE ABRIDGED BY STATES.

...nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES and REGULATIONS

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STATEMENT OF THE CASE

In 2002 the superior court of the State of Washington issued inter alia an order for child support. The court stated on and for the record that the judgment was in violation of constitutional protections. Schreiner challenged the judgment as void. The State of Washington Dept. of Social and Health Services, Support Enforcement, has been garnishing Schreiner's paycheck's for child support to date. In 2006 the State brought an action to modify the judgment. Schreiner challenged the judgment as void. Schreiner likewise challenged the states authority to petition and prosecute the action for modification.

ARGUMENT

It should be stated at the outset here that the actual narrative conclusive ruling is from Division One Court of Appeals, see appendix 01. The Supreme Court of the State of Washington denied review by order, and was otherwise silent on all matters. See appendix 02.

On the issue of void judgments and jurisdiction;

On March 22, 2002 the Snohomish County Superior Court entered judgment, see appendix 03, in the dissolution proceeding against Schreiner inter alia for

child support, with an order striking Schreiner's pleadings, see appendix 04. Schreiner was adjudged to pay child support considering the following oral ruling of the trial court. The 2002 trial court transcript colloquy reads in pertinent part as follows;

McCanna [*then counsel for Ewing*] : Well your Honor I would like the court to – ask the court to make a ruling on our motions for striking the pleadings of the respondent [*Schreiner*] based on his violation of the local rule 94.04.

Court: So your motion is granted.

Court: "Which means you as the respondent [*Schreiner*] in this particular case cannot put before the Court any proposal on the issues that are before the court. You can't give me a parenting plan in opposition to her proposed parenting plan, which is basically where we're at in this case, is the parenting plan issues. You're not able to put forth any information regarding proper child support figures for an actual order of child support. You can't do anything. You are basically --your hands are tied. You have no legal standing to present a case. This is a constitutional violation of a court rule. And as a result of that, you have been denied the opportunity to present a case.

The ruling of the trial court was a blatant and obvious violation of the State's obligation to provide due process and Schreiner's constitutional Right to due process. The trial court did not allow Schreiner to defend the action, to testify or present evidence, neither question witness's or challenge any submissions by Ewing.

This type of judicial proceeding was best described in *Hovey v Elliott* 167 US 409. The United States Supreme Court stated;

> "...after striking out the answer and refusing to consider the testimony filed in the cause, the judgment was beyond the jurisdiction of the court, ...a more fundamental question...is whether a court...has the right to summon a defendant to answer, and then obtaining jurisdiction by the summons, refuse to allow the party summoned to answer, or strike his answer from the files, suppress the testimony in his favor, and condemn him without consideration thereof, and without a hearing..."
>
> *Hovey v Elliott* 17 US 409

> Wherever one is assailed in his person or his property, there he may defend, ...A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal."
> *Windsor v McVeigh* 93 US 277

In the years after *Hovey* this Court has made several rulings based on the *Hovey* doctrine, as stated herein;

> "The due process clause of the fourteenth amendment grants an aggrieved party the opportunity to present his case and have its merits fairly judged, so that some form of hearing is required before the owner is finally deprived of a protected property interest: a state may not finally destroy a property interest without first giving the putative owner the opportunity to present his claim of entitlement.
>
> This conclusion is hardly a novel one. The court traditionally has held that the due process clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property... the court read the

"property" component of the Fifth Amendments Due Process Clause to impose "constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." Id. At 209. See also *Hammond Packing Co. v. Arkansas, 212 US 322, 349-351 (1909)* (Power to enter default judgment); *Hovey v. Elliott, 167 US 409 (1897)*; *Windsor v. McVeigh, 93 US 274 (1876)*; Cf. *Wolff v. Mcdonnell, 418 US 539, 558 (1974)*. Similarly, the fourteenth amendments due process clause has been interpreted as preventing the states from denying potential litigants use of established adjudicatory procedures, when such an action would be "the equivalent of denying them an opportunity to be heard upon their claimed [rights]." *Bodie v. Connecticut, 401 US 371, 380 (1971)."*

Logan v. Zimmerman Brush Co.
455 US 422, 102 S. Ct. 1148 (1982)
see also similarly;
Jackson v Virginia 443 US 307, 99 S.Ct. 2781 (1979); *Arthur Lujan v G&G Fire Sprinkler* 532 US 189, 121 S.Ct. 1446 (2001)

The citation to *Logan* et seq, above is a proliferation of the United States Supreme Court expositive declarative command on the requirements of due process and how the striking of pleadings surrenders the courts subject matter jurisdiction whereby any judgment rendered is a void judgment. The evolution from *Hovey* in 1897, *Jackson* in 1979, *Logan* in 1982 and *Lujan* in 2001 shows reverently that the Supreme Court is unwilling to sacrifice, suspend or otherwise concede that due process necessarily must afford a litigant with an interest in the suit the opportunity to defend, and the expectant obligation of the court is to afford him that opportunity.

Schreiner filed and noted for hearing a motion to vacate the judgment as void on March 29, 2002, that motion was denied by the trial court on the basis that Schreiner failed to comply with SCLSPR 94.04(c)(5)(D). see appendix 05

When the State brought an action to modify the child support judgment in November 2006, see appendix 06, Schreiner again in the course of proceedings filed a motion to vacate the judgment as void. The trial court's response again is denial. See appendix 07. However this 2007 ruling suggests that a void judgment may not be vacated because of its age.

The transcript colloquy reads in pertinent part as follows;

> **Court**:And to the extent that this is tantamount procedure or motion to somehow set aside that judgment or to vacate a "void judgment," the court will deny that on the basis that there is neither a basis in law at this point in time to set aside that judgment some five years later.

However in the State of Washington, the courts of appeal have in fact vacated judgments that well exceed the five year mark. See *Allstate Ins. Co. v Khani* 75 Wn App 317, vacated after five years; *Brenner v Port of Bellingham* 53 Wn App 182, vacated after sixteen years.

The court of appeals, upholding the validity of the 2002 judgment, claiming that the trial court committed legal error, ruled that the judgment is not void for reason that Schreiner could have appealed the ruling but failed to do so. See appendix 01

However, the courts of appeal have maintained that appeal need not be a predicate to vacating a void judgment.

> The *Does* correctly observe that a void judgment is always subject to collateral attack....Even assuming an appeal would lie, cases permitting a void order to be collaterally attacked do not appear to require that a direct appeal be exhausted or even pursued.
>
> *Jane Doe v Fife Municipal Court* 74 Wn App 444

As was stated in the 2002 transcript colloquy above the local rule at issue (2002 version) reads as follows;

(SNOHOMISH COUNTY LOCAL SPECIAL PROCEEDINGS RULE)
SCLSPR 94.04(c)(5)(D),

> **Failure to Comply.** Delay, refusal or default by one parent does not excuse timely compliance by the other parent. However, a parent who delays beyond the 60 day deadline, or who otherwise fails or refuses to complete the parenting seminar, shall be precluded from confirming the case for trial or presenting and final order affecting the parenting residential plan, and shall further be precluded from seeking affirmative relief in this or subsequent proceedings in this file, until the parenting seminar has been successfully completed. Willful refusal or delay by either parent may

constitute contempt of court and result in sanctions imposed by the court, or may result in the imposition of monetary terms, default and/**or striking of pleadings.**

Therefore, according to the State, Constitutional due process is, at least in the instant matter, wholly contingent on compliance with a local court rule. This petitioner could not find that text written into nor even remotely referenced in the Fourteenth Amendment. In fact the state agrees as follows;

"The State and Federal Constitutions, not court rules, are the source of the right."
Seattle v Williams 101 Wn 2d 45, 680 P. 2d 1051
State v Fleming 41 Wn App 33

"Procedural rules of court cannot be used to take away substantive rights."
State v Fields 85 Wn 2d 126, 530 P2d 284,
State v Pavelich 153 Wash 379, 279 P 1102,
In re The Marriage of Hermsen 27 Wn App 318, 617 P 2d 462

"Exclusion of testimony violates constitutional right to due process."
State v Ellis 136 Wn 2d 498

> "A judgment is void if the rendering court lacked jurisdiction over the parties, or over the subject matter, or if due process requirements were not fulfilled."
> *Marriage of Himes* 136 Wn 2d 707

Above are seven higher State court cases which galvanize Schreiner's claim that the 2002 judgment is **void**. Yet the State remains self conflicted as to the instant matter.

If due process requirements were not fulfilled in 2002 and Schreiner was excluded from testifying in 2002 and was excluded from presenting evidence by implication of a court rule in 2002 then Schreiner's Constitutional Rights have in fact been violated and the State's obligation to provide due process is lacking thusly the judgment is void; irrespective of appeal.

> "A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court."
> *Old Wayne Mutual Loan Assn. V McDonough* 204 US 8, 27 S.Ct. 236 (1907)

> Void judgment under federal law is one in which the rendering court acted in a manner inconsistent with due process of law or otherwise acted unconstitutionally in entering judgment.
> *Hays v Louisiana Dock Co.* 452 N.E. 2D 1383

> No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been.
> *Fritts v Krugh* 92 N.W.2d 604, 354 Mich. 97

The appellate court upheld the 2002 trial court ruling, which, by way of the judgment role, carries a judicial determination that Schreiner did not have standing, therefore by operation of law the trial court wanted jurisdiction over the parties, ipso facto had no subject matter jurisdiction. Schreiner claims a right to vacation of judgment and return of property.

The State judiciary is conflicted by expression of two separate rationale as to how the judgment is to be reasoned valid. The State judiciary is equally conflicted by expression of two separate rationale as to how the Judgment should not be vacated. Schreiner is entitled to vacation of judgment demanding equal protection under "the law of void judgments".

Perhaps under the scrutinous review of this Court the State can resolve its confliction.

On the issue of striking the trial denovo and violation of equal protection of the law;

Schreiner was denied, his Constitutional Right to due process and, the State's obligation to provide due process by the State's inability to give equal protection under the law. The parties engaged an arbitration on August 21, 2007. The arbitrator filed the ruling/award on August 22, 2007. See appendix 08. Subsequently Schreiner filed a demand for trial denovo pursuant to statute with an attached declaration of mailing on Sept. 10, 2007, see appendix 09. The State filed a motion to strike Schreiner' demand for trial denovo on October 09, 2007. The court did sign an order thereby striking Schreiner's demand for trial denovo on Nov. 01, 2007, see appendix 10.

The State and Federal Constitutions, not court rules, are the source of the right. See *Seattle v Williams* and *State v Fleming* supra. On States motion to strike the trial de novo the State references Mandatory Arbitration Rule (MAR)7.1 which reads as follows;

> REQUEST FOR TRIAL DE NOVO
>
> (a)Service and Filing. Within 20 days after the arbitration award is filed with the clerk, any aggrieved party not having waived the right to appeal may serve and file with the clerk a written request for a trial de novo in the superior court along with proof that a copy has been served upon all other parties appearing in the case. The 20--day period within which to request a trial de novo may not be extended.

The State alleges that Schreiner has not complied with MAR 7.1.

> The standard of review for construction of rules of court are the same as those for the construction of statutes.
>
> *Heaney v. Seattle Mun. Ct.*, 35 Wn. App.150, 665 P.2d 918 (1983),review denied, 101 Wn. 2d 1004 (1994) (appellate court will interpret local court rule by reference to rules of statutory construction)

The State levies the entirety of their position on the ruling in *Vanderpol v Schotzko*, and *Nevers v. Fireside, Inc.*. The State's contention, like that of litigant *Vanderpol*, first, is under CR 5(b)(2)(A) service is not perfected until three days after mailing, and second, substantiated by receipt or at least the passage of time to allow for receipt, and an affidavit of service attesting to receipt. The State's contention here is ***Not*** the decision or analysis of the court of appeals. *Vanderpol* argues that the trend is to follow *Nevers*, and strictly apply MAR 7.1 (a) to require proof of actual receipt of service. In fact the court (ironically Division One) specifically **rejected** these arguments. The *Vanderpol* court stated:

> "MAR 7.1 does not require that service be actually received within the twenty days but requires only that service has been made. **Proof of actual receipt** of service within three days of mailing **is not required.**" Service deemed complete is such service." But rebuttal as to the day service is 'deemed complete' by evidence of actual receipt after the presumptive three days would render the 'deemed complete' language in the rule meaningless." **emphasis mine**

Further the court stated:

> "The date of mailing is the operative fact for completion of mailed service and the presumption of completion operates automatically from that date. The serving party has no way of knowing whether the post office has actually delivered the notice."

The clear distinction in *Nevers* is that according to the record *Nevers* failed to file any evidence that the request for trial denovo had been served on the other parties." *Banach* infra.. Division Three Court of Appeals in *State v Van Tuyl* 132 Wn App 750, concurring with Division One. "CR 5(b)(2)(A) allows for service by mailing a copy to the last known address of the person to be served. Service by mail is complete on mailing."

CR 5 (b)(2)(A) is a civil court rule for service of process, which rule provides:

> "If service is made by mail, the service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day."

The Washington Supreme Court in, *Alvarez v Banach* 153 Wn 2d 834, citing *Manius v Boyd* 111Wn App 764, stated that service by mail is "assumed" complete after three days. The court further stated, "We employed the past tense when we promulgated the rule, [MAR 7.1(a)] which provides that the request for a trial denovo must be filed in the superior court, along with proof that a copy has been served upon all other parties appearing in the case."

The certificate of service/mailing is an integral attachment as page two to the demand for trial denovo. As shown above, even the Washington Supreme Court agrees, CR 5 (b)(2)(A), by its language, does not infer or mandate receipt as completion.

> "We will not read language into a statute that is not there."
> *Klevin v City of DesMoines* 111 Wn App. 284, *Hartson P'ship v Goodwin* 99 Wn App. 227, 991 P.2d 1211, (citing *In re custody of Smith* 137 Wn 2d 1, cert, granted sub nom); *Troxel v Granville* 527 U.S.1069, 120 S.Ct. 11

The higher courts ruling on service by mail, and the interpretation of such mailing being galvanized no less than four times in the cases of *Manius, Banach, Van Tuyl* and *Vanderpol,* supra. Schreiner has the same expectant Right to interpretation. The court rule [MAR 7.1] has not been amended to show actual receipt and the appellate court deciding now that Schreiner must allow three days for mailing to effect receipt, without actually overruling the standing precedents, is inconsistent with the protections offered to *Manius, Banach, Vanderpol, Van Tuyl* supra., and has thusly denied Schreiner equal protection under the law. This is the second time the State has stricken Schreiner's pleadings.

Arbitration is not a judicial proceeding and does not qualify as a "fair hearing" for establishment of the facts of the matter. The arbitration process is used to attempt the forced resolution of the issue between the parties litigant. Please recall that it has already been adjudged that Schreiner does not have standing in this action. That notwithstanding, once again the State is conflicted as to whether they have an obligation to provide equal protection under the law and whether Schreiner has a Constitutional Right to equal protection of the law.

> The equal protection guarantee of clause one of the Fourteenth Amendment, requires like treatment for persons similarly situated with respect to a legitimate purpose of law.
>
> *Harmon v McNutt* 91 Wn 2d 126, 587 P2d 537 (1978)

BUT OF COURSE THE STATE KNEW THAT ?!?!

On the issue of statutory jurisdiction and authority;

The second section above relates to this section in that the arbitration and ensuing demand for trial denovo is based on an award of child support sought by the State at the behest of Ewing.

On Nov. 01, 2006 the State of Washington filed a petition for modification of child support, styled "States Petition for Support Modification". See appendix 06. Wherein at section 1.4, LEGAL BASIS FOR STATE ACTION, the State claims authority by 42 USC §666 (a)(10)(A) and RCW 74.20.220.

Schreiner verbally challenged the jurisdiction of the court on Feb.15, 2007 whereupon the court entered a temporary order on modification for the State. No comment was made by the court or the State. At a hearing on May 31, 2007 Schreiner again forced the challenge on standing of the State. The court responded verbally "I believe the State has standing" with a written memorial, (out of context). Schreiner filed a memorandum written challenge to the States standing on Aug. 06, 2007. Schreiner contends the State does not and cannot have authority to initiate and prosecute the action for support modification, in the present guise, because the requisite statute criteria are failing.

Below Schreiner has selected six only of the myriad chapters of Washington policy dealing with public assistance, the last of which is the predatory chapter which the State uses to intercede in common divorce matters. For example they read, Revised Code of Washington, Title 74, Chapter 12, section 010, etc.

Initially, the State's claim of authority fails because respondent Ewing does not qualify for public benefits for want of actually complying with the criteria of the statutes.

Those statutes read as follows;

RCW 74.04.005,

(6)(a) "General assistance" -- Aid to persons in need who:

(i) Are not eligible to receive federal-aid assistance, other than food stamps or food stamp benefits transferred electronically and medical assistance; however, an individual who refuses or fails to cooperate in obtaining federal-aid assistance, without good cause, is not eligible for general assistance;

(ii) **Meet one of the following conditions**:

(emphasis mine)

(A) Pregnant: PROVIDED, That need is based on the current income and resource requirements of the federal temporary assistance for needy families program; or

(B) Subject to chapter 165, Laws of 1992, incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days as determined by the department.

(C) Persons who are unemployable due to alcohol or drug addiction are not eligible for general assistance. Persons receiving general assistance on July 26, 1987, or becoming eligible for such assistance thereafter, due to an alcohol or drug-related incapacity, shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. Alcoholic and drug addicted clients who are receiving general assistance on July 26, 1987, may remain on general assistance if they otherwise retain their eligibility until they are assessed for services under chapter 74.50 RCW.

RCW 74.09.035,

(1) To the extent of available funds, medical care services may be provided to recipients of general assistance, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW, in accordance with medical eligibility requirements established by the department.

There is nothing in the record to suggest that Ewing was pregnant, incapacitated from gainful employment, or a drug addict.

Ewing admitted to being "underemployed", as noted in the arbitrator' ruling. Ewing also admitted to working two jobs. Petitioner takes issue with this statement for reason that a person working two jobs does not always mean two full time eight hour jobs but the phrase also connotes pulling a 5 hour shift two days a week and then maybe a seven hour shift three days a week.

Realistically, one may use whatever combination of hours and days to fabricate and or calculate the two job scenario, however in the instant matter, the exactness of the truth of the facts is not known to petitioner for want of due process.

Secondly, the State's claim fails for the want of authority again because the children in cause are not abandoned or placed in foster care as written in the statute. Petitioner has highlighted the predicate words and phrases for amplitude. Those statute's read as follows;

RCW 74.12.010,

For the purposes of the administration of temporary assistance for needy families, the term "dependent child" means any child in need under the age of eighteen years who is living with a relative as specified under federal temporary assistance for needy families program requirement in a place of residence maintained by one or more of such relatives as his or their homes. The term a "dependent child" shall, notwithstanding the foregoing, also include a child who would meet such requirements except for his removal from the home of a relative specified above as a result of a judicial determination that continuation therein would be contrary to the welfare of such child, **for whose placement and care the state department of social and health services or the county office is responsible, and who has been placed in a licensed or approved child care institution or foster home as a result of such determination.** **Emphasis mine**

RCW 74.13.010,

The purpose of this chapter is to safeguard, protect and contribute to the welfare of **the children of the state**, through a comprehensive

and coordinated program of public child welfare services providing for: Social services and facilities for children who require guidance, care, control, protection, treatment or rehabilitation; setting of standards for social services and facilities for children; cooperation with public and voluntary agencies, organizations, and citizen groups in the development and coordination of programs and activities in behalf of children; and promotion of community conditions and resources **that help parents** to discharge their responsibilities for the care, development **and well-being of their children**.

Emphasis mine

RCW 74.14A.010,

The legislature reaffirms its declarations under RCW 13.34.020 that the family unit is the fundamental resource of American life which should be nurtured and that the family unit should remain intact in the absence of compelling evidence to the contrary. The legislature declares that the goal of serving **emotionally disturbed and mentally ill children, potentially dependent children**, and families-in-conflict in

their own homes to avoid **out-of-home placement of the child**, when that form of care is premature, unnecessary, or inappropriate, is a high priority of this state.

Emphasis mine

RCW 74.14C.005,

(1) The legislature believes that protecting the health and safety of children is paramount. The legislature recognizes that the number of **children entering out-of-home care** is increasing and that a number of children receive **long-term foster care protection.** Reasonable efforts by the department to shorten **out-of-home placement** or avoid it altogether should be a major focus of the child welfare system. It is intended that providing up-front services decrease the number of children entering **out-of-home care** and have the effect of eventually lowering **foster care** expenditures and strengthening the family unit.

Emphasis mine

RCW 74.15.010,

The purpose of chapter 74.15 RCW and RCW 74.13.031 is:

(1) To safeguard the health, safety, and well-being of children, expectant mothers and developmentally disabled persons **receiving care away from their own homes**, which is paramount over the right of any person to provide care;

(2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that **foster care is provided** only **when a child's family,** through the use of all available resources, **is unable to provide necessary care**;

(3) To promote the development of a sufficient number and variety of adequate child-care and maternity-care facilities, both public and private, through the cooperative efforts of public and voluntary agencies and related groups;

(4) To provide consultation to agencies caring for children, expectant mothers or developmentally disabled persons in order to help them to improve their methods of and facilities for care;

(5) To license agencies as defined in RCW

74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained **by all agencies caring for children**, expectant mothers and developmentally disabled persons.

Emphasis mine

RCW 74.20.010, It is the responsibility of the state of Washington through the state department of social and health services to conserve the expenditure of public assistance funds, whenever possible, in order that such funds shall not be expended if there are private funds available or which can be made available by judicial process or otherwise to partially or completely meet the financial needs of the children of this state. **The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause of social delinquency.** The purpose of this chapter is to provide the state of Washington, through the department of social and health services, a more effective and efficient way to effect the support of dependent children by the

person or persons who, under the law, are primarily responsible for such support and to lighten the heavy burden of the taxpayer, who in many instances is paying toward the support of dependent children while those persons primarily responsible are **avoiding their obligations.** It is the intention of the legislature that the powers delegated to the said department in this chapter be liberally construed to the end that persons legally responsible for the care and support of children within the state **be required to assume their legal obligations** in order to reduce the financial cost to the state of Washington in providing public assistance funds for the care of children. It is the intention of the legislature that the department provide sufficient staff **to carry out the purposes of this chapter, chapter 74.20A RCW, the abandonment and nonsupport statutes, and any applicable federal support enforcement statute administered by the department.** It is also the intent of the legislature that the staff responsible for support enforcement be encouraged to conduct their support enforcement duties with fairness, courtesy, and the highest professional standards.

Emphasis mine

Again, there is **NOTHING** in the record that would indicate that Schreiner has abandoned or has in any way neglected the children in cause. In fact Schreiner has always paid support, see appendix 11, and has provided medical coverage, see appendix 12.

In 74.13 above we see that the statute can and does distinguish children and their parents as one operation of law juxtapose children of the state. The latter obviously being the predicate to foster care and out of home placement as shown in 74.12, 74.14A, 74.14C, and 74.15.

> Absent ambiguity, a statutes meaning must be derived from the wording of the statute itself without judicial construction or interpretation." *Diehl v W. WA. Growth Mgt. Hearing Brd* 153 Wn 2d 207, citing *Ricketts v Brd. of Accountancy* 111 Wn App 113 (quoting *Fray v Spokane County* 134 Wn 2d 637).

Petitioner declares implication of the rule of preemption. Under the rule of preemption, where State statute's conflict with Federal statute's the Federal statute prevails, to the extent they cover the same subject matter, notwithstanding the state's ability to magnify the scope of the act so long as it remains consistent. Cites omitted.

As referenced in the States petition to modify the child support order, the State claims authority under 42 USC 666(a)(10)(A), which title reads as follows,

> REVIEW AND ADJUSTMENT OF SUPPORT ORDERS UPON REQUEST.--(a) 3YEAR CYCLE.--(i) In general.--.

Petitioner would bring to this Courts attention that not only and notwithstanding the fact that the State has skipped right over the first 654 sections prior to their claim of authority under §666, the State has likewise skipped over the first nine sub-sections and gone straight to ten, enforcement of support orders.

> "It is too well-established to need citation of authority that a court may not place a narrow, literal, and technical construction upon a part only of a statute and ignore other relevant parts. In the process of construction, the intention of the lawmakers must be extracted from a consideration of all of the provisions of the act." *DeGrief v City of Seattle* 50 Wn 2d 1 (citing *In re Cress*, 13 Wn. (2d) 7, 123 P. (2d) 767.) see also *Commercial waterway District no.1 of King County v Permanente Cement Company* 61 Wn 2d 509

But of course, in and of the first nine, at §(5) the statute requires procedures concerning paternity establishment, genetic testing, paternity acknowledgment and presumptions of paternity -upon genetic testing.

Not to be ignored are the sections following, titled;

> **§668. Encouragement of States to adopt civil procedure for establishing paternity in contested cases**
>
> see also
>
> **§671. State plan for foster care and adoption assistance**
>
> see also
>
> **§672. State foster care maintenance payments program**

Title IV section D of the Social Security Act codified at the Federal statutes, specifically at 42 USC 666 et seq, declares an intent to place and care for children that don't have parents involved in their rearing, and or the care of children whose parents have in fact abandoned them.

"As a general rule of statutory construction where the terms of a statute are unambiguous, judicial inquiry is complete. ... Preemption is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose. ... It is to be assumed when Congress enacts a statute that it does not intend to make its application dependent on state law. Congress may choose to establish state remedies as adequate alternatives to federal relief, but federal rights should be regarded as supplementing state-created rights unless otherwise indicated. ... Federal legislation applies in all states, and in cases of conflict between federal law and the policies purportedly underlying some state regulatory schemes, the scope of federal law is not curtailed. ... A gap is not created in a statutory scheme merely because a statute does not restate the truism that states may not pre-empt federal law. ... federal pre-emption of the state exclusivity provisions is compelled whether Congress' command requiring pre-emption is explicitly stated in the statute's language or implicitly contained in the statute's structure and purpose.

... Basic principles of statutory construction require giving effect to the meaning and placement of the words chosen by Congress. ... Federal legislation applies in all states, and in cases of conflict between federal law and the policies purportedly underlying some state regulatory schemes, the scope of federal law is not curtailed; that congressional authorization of a federal remedy may affect the balance struck in state regulatory schemes does not suggest that Congress intended its remedial provisions to be effective in only certain states... A precondition to a court's deference to an administrative agency's view of the scope of a federal statute is a congressional delegation to the agency of administrative authority concerning the statute; however, a "gap" is not created in a statutory scheme, so as to indicate such a congressional delegation of administrative authority, merely because a statute does not restate the truism that states may not pre-empt federal law.

Adams Fruit Co., Inc. v. Barrett
494 U.S. 638; 110 S. Ct. 1384 (1990)

To show the similarity of State law to Federal law, notwithstanding the aforementioned State statutes, The Washington State Legislature passed a bill for the support of "dependent children" needing public monies and other aid. The bill states;

> "...the child or children has or have been abandoned by its parents or that the child or children and one parent have been abandoned by the other parent..."
>
> Session Laws, 1959, Chapter 322,
> House Bill 290

The preemption by the Federal statute's begins [in this petition] with 74th Congress, Sess. I. Ch. 531, August 14, 1935. Reading as follows;

> TITLE IV—GRANTS TO STATES FOR AID TO DEPENDANT CHILDREN, DEFINITIONS, SEC. 406. When used in this title-- (a) The term "dependent child" means a child under the age of sixteen who has been deprived of parental support or care by reason of the death, **continued absence from the home**, or physical or mental incapacity of a parent...
>
> **Emphasis mine**

followed by;

Public Law 93-647- January 04, 1975, 88 STAT. 2351; CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY SEC. 451 AND 452; which uses the terms "absent parents" and "locating absent parents",

followed by;

Public Law 93-378- August 16, 1984, 98 STAT. 1305; using the term "absent parent" nine times,

followed by;

Public Law 104-193- August 22, 1996, 110 STAT. 2259; striking the word "absent" and replacing it with the word "non-custodial",

The laws cited above highlight several distinct and remarkable facts. First, the children [and] one parent would have to have been abandoned, or Second, the children would have to have been placed in foster care by administrative or judicial order, or Third, the child [children] are wholly subsistent on state money at the age of sixteen possibly due to pregnancy; none of which has been established of record in the instant matter.

At the arbitration hearing in Aug. 2007, Schreiner asked the State this question; "the children in question, are they children of the State of Washington or are they children of Kristi Ewing and Brian Schreiner?", the State objects to the question claiming it to be "argumentative". It would seem then that there needs to be clarification as to who's children or which children we are discussing, because once again, by objection, the State can and does distinguish children and their parents as one operation of law juxtapose children of the state, necessitating a factual inquiry.

Referencing the forgoing question, Schreiner offers the following rationale to the state appellate court in support of the argument of the want of authority;

Black's Law Dictionary, 7th Ed, defines a governmental nonparent a.k.a. noncustodial parent;

> *Parens Patriae* (2)- A doctrine by which a government has standing to prosecute a lawsuit on behalf of a citizen, especially on behalf of someone who is under a legal disability to prosecute the suit. -The state ordinarily has no standing on behalf of its citizens unless a separate sovereign interest will be served by the suit.

> Non-parents are usually involved...in three situations, first, the state may exercise its power as *parens patriae*...
> 58 *Wash. L. Rev.* 111 (1982); citing,
> *In re Marriage of Allen* 28 Wn App 637,
> 626 P.2d 16 (1981)

The appellate court is not in disagreement to Schreiner's contention that the State does not have authority; by reason that the appellate court themselves cited to, the *Parentage of I.A.D.* 131 Wn App. 207, 126 P.3d 79.

I.A.D. involves placement of a child with grandparents. The factual circumstance are that the mother was a drug addict and the father was unaware of the pregnancy.

The reference to *I.A.D.* by the appellate court is States admission, and reconnoitre of the distinction between children of separated or divorced parents as one operation of law juxtapose children that are actually dependent on the State for subsistence.

However, it is worth discussion that not every divorce action rises to the level of abandonment, where it is, as shown by reference to the statutes above, that the State has the authority then to "locate" "absent" parents.

Notwithstanding the change in words from "absent" to "non-custodial", the original intent of the statutes has not changed or been amended to include every common dissolution action, then and thereby qualifying as "abandoned children", of "absent parents", in need of assistance from the State.

> Under the Supremacy Clause of the United States Constitution, "the Laws of the United States ... shall be the supreme Law of the Land..., any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, cl. 2. A state law which conflicts with federal law is unenforceable. *In re Tax Appeal of Karsten*, 22 Kan. App. 2d 882, 886, 924 P.2d 1272 (1996). Because "'[t]he purpose of Congress is the ultimate touchstone' in every pre-emption case," analysis of a federal statute "must begin with its text," including the "'structure and purpose of the statute as a whole.'"

Medtronic, Inc. v Lohr, 518 U.S. 470, 116 S. Ct. 2240 (1996) (quoting *Retail Clerks v Schermerhorn*, 375 U.S. 96, 84 S. Ct. 219 [1963], and *Gade v. National Solid Wastes Mngmt Assn.*, 505 U.S. 88, 112 S. Ct. 2374 [1992]).

"Congressional intent has been traditionally determined by an examination of the language and focus of the statute, its legislative history, and a consideration of its statutory purpose."
R. B. J. Apartments, Inc. v. Gate City Savings & Loan Association, 315 N.W.2d 284, 287 (N.D.1982)

"Statutes must be construed with reference to the policy intended to be accomplished, so as to effectuate the legislative purpose which prompted their enactment."
Hughes v. State Farm Mutual Automobile Insurance Company, 236 N.W.2d 870 (N.D. 1975).
Northwest Airlines v. State, ex rel. Board of Equalization 358 N.W.2d 515 (N.D. 1984)

So it is Schreiner's contention that the State has bootstrapped dissolution actions under RCW 26.09 to State dependency statutes under RCW 74 et seq. and

Federally assisted subsistence living program statutes at Title 42 USC for those who are truly in need.

> The support order in question was entered to a separate and independent action in the domestic relations section...nowhere in the code has the legislature authorized the award of child support or spousal support unless one indulges in a form of **bootstrapping**. **Emphasis mine**
> *Common Pleas Court of Clinton County, PA*
> *Bibey v. Bibey* 23 Pa. D. & C.3d 489, (1982)

It has already been established that Ewing has been voluntarily underemployed, suggesting that she may not actually need State assistance, Schreiner had the children covered under a private medical plan, and Schreiner has in fact paid child support.

Notwithstanding the States inability to properly investigate potential, I'll call them, "clients", the State hands out benefits to anyone who asks, so long as they sign over rights to collect the child support payment, whereupon the State may seek modification of child support where it otherwise would not have authority.

This is bootstrapping at its finest, combining standard issue dissolution (divorce actions) with those statutes which grant assistance for pregnant teenage

mothers and elderly unemployable individuals. This raises concerns for this petitioner that the State is collecting federal grants for children that don't actually comprise the category that is "dependent".

> A lack of specific attention to the statutory authorization under which an agency took an action is especially important in light of the fact that one factor to be considered in giving weight to an administrative ruling is the thoroughness evident in the agency's consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.
>
> > "The construction put on a statute by the agency charged with administering it is entitled to deference by the courts, and ordinarily that construction will be affirmed if it has a 'reasonable basis in law." *NLRB* v. *Hearst Publications*, 322 U.S. 111; *Unemployment Commission* v. *Aragon* 329 U.S.143 *internal citation*

For here its invocation would result in a construction of the statute which not only is at

odds with the language of the section in question and the pattern of the statute taken as a whole, but also is extremely far reaching in terms of the virtually untrammeled and unreviewable power it would vest in a regulatory agency.
Securities and Exchange Comm. v. Sloan
436 U.S. 103; 98 S. Ct. 1702 (1978)

We there stated:
"First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.... [A] court

may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Id.*, at 842-844.

Young v. Comm. Nutrition Inst. et al
476 U.S. 974; 106 S. Ct. 2360 (1986) citing, *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

"It is a general principle of interpretation that the mention of one thing implies the exclusion of another thing; expressio unius est exclusio alterius."

25 R. C. L. 981, § 229.

In *North Point Consolidated Irr. Co. v. Utah & S. L. Canal Co.*, 14 Utah 155, 46 Pac. 824, the court made this statement:

"The maxim, `Expressio unius est exclusio alterius,' is usually applied to determine the intention of the lawmaker where it is not otherwise expressed, and is applicable to constitutional or statutory provisions which grant originally a power or right. When a statute

defining an offense designates but one class of persons as subject to its penalties, all other persons are deemed to be excluded. *As a general rule, the expression of one thing in a constitution or statute excludes all others. So* ***specific provisions,*** *relating to particular subjects,* ***must govern*** *in relation to that subject, as against* ***general provisions*** *in other parts of the law which might otherwise be broad enough to include it*. Where a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others and the natural inference follows that it is not intended to be general." (Italics ours.) **emphasis mine**
the State of Washington, on the Relation of the Port of Seattle v. the Department of Public Service et al. 1 Wn.2d 102

Under the"expressio unius est exclusio alterius" canon of statutory construction, the expression of one thing in a statute "implies the exclusion of the other."
State v. Delgado, 148 Wn.2d 723, 63 P.3d 792 (2003) *citing In re Det. of Williams*, 147 Wn.2d 476, 55 P.3d 597 (2002)

"Legislative inclusion of certain items in a category implies that other items in that category are intended to be excluded."
Bour v. Johnson, 122 Wn.2d 829, 864 P.2d 380 (1993).

"Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim expressio unius est exclusio alterius--specific inclusions exclude implication."
Washington Natural Gas Co. v. Public Util. Dist. No. 1, 77 Wn.2d 94, 98, 459 P.2d 633 (1969).

It is, without discounting preemption, with utmost reliance on the rule of statutory construction as stated above, Schreiner implores this Court to read the statutes as they were originally enacted and the specific historic intent of their provisions. Notwithstanding the rule of statutory construction as stated above, Schreiner equally implores that the whole act rule controls with like force and affect as to design, intent and execution of each and all of the forgoing (and related) statutes.

"When Legislative intent is at issue, the whole act rule requires that the entire statute, not merely designated parts, be reviewed." *Prante v Kent School District 27 Wn. App. 375,* (citing *Graham v State Bar Ass'n* 86 Wn 2d 624, 548 P. 2d 310, *State v Rinkes* 49 Wn 2d 664, 306 P. 2d 205, *Degrief v Seattle* 50 Wn. 2D 1, 297 P. 2d 940.)

We have, however, recently indicated that the plain meaning of a statute may be "discerned from all that the legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). Under this approach, we construe the act as a whole giving effect to all of the language used. We stated that this "formulation of the plain meaning rule provides the better approach because it is more likely to carry out legislative intent." *Thurston County v Cooper Pt. Assn* 148 Wn 2d 1 see also State v. Houck, 32 Wn.2d 681, 203 P.2d 693 (1949), (citing *Lin v. Reid,* 114 Wash. 609, 196 Pac. 13; *State ex rel. Baisden V. Preston,* 151 Wash. 175, 275 Pac. 81; *Pease v. Stephens,*

173 Wash. 12, 21P. (2d) 294; *Arden Fare Co. v. Seattle,* 2 Wn. (2d) 640, 99P. (2d) 415; *State ex rel. Wilson v. King County,* 7Wn. (2d)291.)

We emphasize that " [w]e read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters." *Miller v. Weaver*, 2003 UT 12, 66 P.3d 592 (emphasis added). In so doing, we adhere to " ' "the cardinal rule that the general purpose, intent, or purport of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious to its manifest object." ' " Id. (Citations omitted). Therefore, to avoid interpreting the statute in a "piecemeal fashion," we interpret the terms of the act as a "comprehensive whole."
Business Aviation of S.D., Inc. v. Medivest, Inc., 882 P.2d 662, 665 (Utah 1994).

Lastly, in the appellate ruling the court stated :

"Finally, Schreiner requests the return of all the child support he has paid in the past and make up time with his children. Because he fails to

demonstrate that such relief is required or justified we deny these requests."

Schreiner views and claims this statement to be yet another attempt to deprive him of his property and violate his Constitutional Right to equal protection under the law. Schreiner in fact showed precedent for the return of child support paid under a void judgment in his "Reply Brief of Appellant" as follows:

> "Further, Appellant relies on Division III Court of Appeals ruling in *Hardt*, in its entirety, where that Court delineated nearly exactly the present case. In *Hardt* four prominent facts arose, *1)* Mr. Hardt was not conclusively established as the father or parent of the child, *2)* the judgment was shown to be void, evidenced by the judgment role, *3)* the child support paid to the Office of Support Enforcement was returnable as paid under a void judgment, *4)* the judgment was near eight years old. *In the Matter of the Marriage of Hardt* 39 Wn. App. 493; see also, *In re Marriage of Stern* 68 Wn App 922"

Respondents, [1] do not challenge that Schreiner was not conclusively determined to be the father as required by statute, [2] have acknowledged the

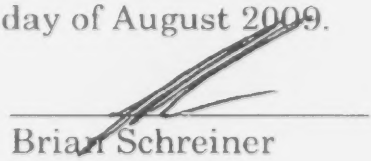
challenged validity of the judgment, [3] admit, by appellate judicial ruling, that the State has collected child support from Schreiner, [4] the judgment in the instant matter is seven plus years aged.

CONCLUSION

Constitutional violations are not a caliber "error". Respondents do not dispute that due process was violated only that Schreiner should have taken appeal to correct what the State did intentionally. Intent is not error!! Respondents have knowledge of the invalidity of the judgment, however respondents believe that collecting child support is more important than addressing their Constitutional obligations to Schreiner. The State of Washington has replaced the "law of void judgments"; declaring de facto court rules to be of more substantive authority than the Constitution of the United States.

Therefore, petitioner respectfully requests this Court grant the Writ of Certiorari.

Respectfully submitted this 24th day of August 2009.



Brian Schreiner
Petitioner

APPENDIX

01.	Appellate ruling.	(i)
02.	Supreme Court order.	(xiv)
03.	Child support order from 2002 judgment.	(xvi)
04.	Order striking Schreiner's pleadings.	(xxxi)
05.	2002 order denying vacation.	(xxxiii)
06.	States petition to modify child support.	(xxxiv)
07.	2007 order denying vacation.	(xxxix)
08.	Arbitration award.	(xl)
09.	Demand for trial denovo.	(xlviii)
10.	Order striking trial denovo.	(xli)
11.	Child support history.	(liii)
12.	Proof of medical coverage.	(liii)

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON
DIVISION ONE

KRISTI L. EWING,	)	NO. 60462-7-I
Respondent,	)	consolidated with
	)	NO. 61261-1-I
v.	)	UNPUBLISHED OPINION
BRIAN SCHREINER,	)	
Appellant.	)	FILED: November 17, 2008

PER CURIAM. Four years after dissolution of the marriage of Kristi Ewing and Brian Schreiner in 2002, the State filed a petition to modify child support at Ewing's request. The trial court rejected Schreiner's claim that the 2002 orders were void for lack of subject matter jurisdiction and referred the action to mandatory arbitration. Following an arbitration hearing where Schreiner refused to offer testimony or evidence and Schreiner's failure to timely file and serve his request for trial de novo, the trial court entered final orders modifying child support and temporarily restricting his

visitation rights. Schreiner appeals, arguing that the 2002 orders are void, and that the trial court (1) lacked authority to send the matter to arbitration; (2) violated RAP 7.2 by entering final orders while his appeal of prior orders was pending; and (3) striking his request for trial de novo. Because Schreiner fails to demonstrate any error, we affirm.

FACTS

On March 22, 2002, Brian Schreiner and Kristi Ewing appeared for trial to dissolve their marriage and provide for the care and support of their two daughters aged 9 and 10 years old. Because Schreiner failed to complete a seminar as previously ordered by a commissioner, the trial court granted Ewing's motion to strike Schreiner's pleadings and preclude him from seeking affirmative relief in the matter.1

1 Snohomish County Local Rule SCLSPR 94.04(c)(5)(D) provides: "[A] parent who fails to complete the parenting seminar, shall be precluded from confirming the case for trial or presenting any final order affecting the parenting/residential plan, and may be precluded from seeking affirmative relief in this or subsequent proceedings in this file, until the parenting seminar has been successfully completed. Refusal or delay by either parent may constitute contempt of court and result in sanctions imposed by the court, or may result in the imposition of monetary terms, default and/or striking of pleadings."

Based on Ewing's evidence and requested relief, the trial court signed a decree of dissolution, a parenting plan and an order of child support requiring Schreiner to pay $643.42 per month in child support to the Washington State Support Registry. Neither party appealed these orders.

In July 2006, Ewing requested that the Washington State Department of Child Support seek an increase of support because she was working two jobs and paying for all the children's health care expenses. On November 1, 2006, the State filed a petition to modify support alleging the following reasons: 1) more than two years had passed since the prior child support order; (2) the parents' incomes had changed; (3) the children had moved to a new age category for support purposes; and (4) automatic adjustments and health care coverage had not been addressed. On December 20, the State requested a temporary order of support pending arbitration or trial, or alternatively, an order of summary judgment based on Schreiner's failure to respond.

On February 16, 2007, a commissioner denied the motion for summary judgment, but entered a temporary order of support directing Schreiner to pay $1,107.00 per month in child support and directing the State to set

the matter for arbitration within 48 hours. On February 21, the State noted the matter for mandatory arbitration. Because the State failed to file the arbitration notice within 48 hours as ordered, the commissioner later struck the temporary support order. The court also stated that (1) the State had standing in the case; (2) the arbitrator "may set support back to the date of filing of the modification petition"; and (3) should Ewing want a new temporary order, "she may file a motion prior to the arbitration."

In July, Schreiner filed a number of motions including a motion to vacate the original support order based on an alleged lack of subject matter jurisdiction. On July 18, 2007, the trial court denied Schreiner's motions. Schreiner also filed a motion to vacate the arbitration claiming that the State failed to properly draft the order and that the arbitration was stricken when the commissioner struck the temporary support order. The commissioner denied the motion in an order filed August 15, 2007, stating, "The arbitration shall go forward." On August 15, Schreiner filed a notice of appeal designating the July 18 and August 15 orders for review.[2]

2 A commissioner of this court determined that the additional orders listed in Schreiner's first notice of appeal were not appealable and we will not discuss them further.

At the arbitration hearing on August 21, 2007, Schreiner appeared pro se and presented legal arguments but refused to testify or to present any evidence or witnesses. The arbitrator determined Schreiner's income for the purposes of child support based on his actual total earnings during 2006 as his employer reported them to the Employment Security Department. Based on the income information presented for Schreiner and Ewing, the arbitrator used the standard calculation to determine that Schreiner should be ordered to make a monthly transfer payment of $1,141.26.

On August 24, 2007, the trial court filed an order finding adequate cause to restrict Schreiner's contact with the children to supervised visits based on the children's willingness until the guardian ad litem could determine whether their reluctance was based on Ewing's influence. On November 11, 2007, the trial court granted the State's motion to strike Schreiner's request for trial de novo and entered final orders on child support directing Schreiner to make monthly transfer payments of $1,41.26 for the two children, who were then ages 15 and 16. Schreiner filed a second notice of appeal requesting review of these orders. We have consolidated Schreiner's two appeals.

ANALYSIS

Schreiner first contends that the trial court erred in its July 18 order by failing to grant his motion to vacate the 2002 child support order as void for lack of subject matter jurisdiction. He claims that the trial court's decision to prevent him from participating in the March 2002 trial and the trial court's statements about the law at the hearing violated his right to due process and deprived the trial court of subject matter jurisdiction.

Schreiner correctly states that a court has a nondiscretionary duty to vacate a void judgment and that a void judgment can be vacated at any time. See, Allstate Ins. Co. v. Khani, 75 Wn. App. 317, 323, 877 P.2d 724 (1994); In re Marriage of Leslie, 112 Wn.2d 612, 618-19, 772 P.2d 1013 (1989). A judgment is void if the court lacked either personal jurisdiction over the parties or subject matter jurisdiction over the claim. Marley v. Department of Labor and Industries, 125 Wn.2d 533, 539, 886 P.2d 189 (1994). Schreiner does not contest that the court had personal jurisdiction over him. Subject matter jurisdiction is the authority to adjudicate the type of controversy at issue. Marley, 125 Wn.2d at 539.

But Schreiner has confused authority to adjudicate a type of controversy with authority to rule in a particular manner. As noted in Marley, "Courts do not lose subject jurisdiction merely by interpreting matter the law erroneously." Marley, 125 W.2d at 539 (quoting In re Major, 71 Wn. App. 531, 534-35, 859 P.2d 1262 (1993)). Even if the trial court erred in 2002 by denying Schreiner an opportunity to seek affirmative relief in the dissolution trial, or by making incorrect statements regarding the law on the record, the court did not lack subject matter jurisdiction. At most, the trial court committed a legal error that would have been subject to review had Schreiner filed a timely appeal.

Schreiner does not question the superior court's subject matter jurisdiction in controversies over property division, residential arraignments for children or child support flowing from the dissolution of marriages. The trial court properly exercised its jurisdiction when it signed the orders in 2002 dissolving Schreiner's marriage to Ewing and providing for the care and support of their children. Those orders are not void. The trial court properly denied Schreiner's motion to vacate the judgment on July 18.

Schreiner also challenges the August 15 order denying his motion to vacate the arbitration. He argues

that after striking the temporary support order, the trial court lacked authority to send the case to arbitration. But Snohomish County has adopted mandatory arbitration for child support modification proceedings under RCW 7.06.020 3 and SCLMAR 1.2. 4 Because arbitration was required by statute and did not depend on the time line stated in the temporary support order, the commissioner properly denied Schreiner's motion to vacate the arbitration.5

Schreiner next argues that the trial court violated RAP 7.2(c) by modifying the parenting plan in the August 24 order and by striking his request for a trial

3 RCW 7.06.020 provides: "(2) If approved by majority vote of the superior court judges of a county which has authorized arbitration, all civil actions which are at issue in the superior court in which the sole relief sought is the establishment, termination or modification of maintenance or child support payments are subject to mandatory arbitration. The arbitrability of any such action shall not be affected by the amount or number of payments involved."

4 Snohomish County Mandatory Arbitration Rules (SCLMAR) provides in Rule 1.2 that a claim is subject to mandatory arbitration if it "involves solely the establishment, modification, or termination of child support."

5 Despite our commissioner's order directing the parties to address in briefing the appealability of the July 18 order, Schreiner failed to do so. But even assuming, without holding, that the order is appealable, Schreiner fails to demonstrate error.

de novo and entering final orders of child support on November 1, while his appeal was pending. RAP 7.2(e) provides that the trial court has authority to hear and determine "actions to change or modify a decision that is subject to modification by the court that initially made the decision.' If such a determination "will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision." RAP 7.2(c).

Whether the trial court complied with RAP 7.2(e) depends on whether the August 24 and November 1 orders were determinations that affected the outcome under review. State ex rel. Shafer v. Bloomer, 94 Wn. App. 246, 250, 973 P.2d 1062 (1999). Schreiner's first appeal involved only two orders: (1) the July 18 order denying his motion to vacate the 2002 child support order; and (2) the August 15 order denying his motion to vacate the arbitration. None of the challenged orders changed the orders on appeal or somehow limited Schreiner's ability to present his arguments on appeal. Schreiner does not argue or demonstrate that his appeal of the July 18 and August 15 orders was in any way prejudiced by entry of the later orders. The trial court did not violate RAP 7.2(e).

Schreiner also argues that the trial court violated his right to equal protection by denying one of his motions based on RAP 7.2(e) after entering orders requested by the State without reference to the same rule. But our review of the record indicates that the trial court viewed the motion as a renewed attempt to attack the 2002 order of child support as void for lack of subject matter jurisdiction. Because this issue was already on appeal in the July 18 order, the trial court properly denied the motion.

Schreiner assigns error to the trial court's November 11 order striking his request for trial de novo and makes the conclusory statement that his request was timely filed and served. Snohomish County Mandatory Arbitration Rules require service and filing of a request for trial de novo as provided in the State Superior Court Mandatory Arbitration Rules. SCLMAR 7.1(b)(3). MAR 7.1(a) requires service and filing of a request for a trial de novo within 20 days of the filing of the arbitration award. "The 20-day period within which to request a trial de novo may not be extended." MAR 7.1(a). It "is only when there has been timely service and filing of proof of that service, that the court may conduct a trial de novo." Nevers v. Fireside, Inc., 133 Wn.2d 804, 812, 947 P.2d 721 (1997). Where service

is by mail, service has been accomplished on the third day after mailing. CR 5(b)(2)(A); 6, Vanderpol v. Schotzko, 136 Wn. App. 504, 150 P.3d 120 (2007).

The record demonstrates that the arbitrator filed the award on August 22. Thus, under MAR 7.1(a) Schreiner was required to file and serve his request for trial de novo by September 11. Schreiner filed his request on September 10 and stated in the certificate of mailing that he had mailed copies to Ewing and the State on September 10. Because his service by mail was not complete until September 13, his request for trial de novo was untimely and the trial court properly struck it.

Schreiner also complains that the August 24 order providing for a temporary restriction in his visitation constitutes a violation of his right to due process because no action had been taken to restore his visitation by the time he wrote his appellate brief. But Schreiner does not challenge the factual basis for the order or demonstrate any legal error justifying relief on appeal.

6 CR 5 (b)(2)(A) provides: "If service is made by mail,... The service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day."

His concerns regarding visitation issues after the August 24 order are not properly before this court. To the extent Schreiner is dissatisfied with the current situation, he may seek relief in the trial court.

Throughout his briefing, Schreiner presents various arguments and claims that do not reference any particular order before this court on appeal. Schreiner repeatedly argues that the State does not have standing to participate in the support modification action, although he did not challenge the trial court's June 1, 2007 order finding that the State has standing. But the State is allowed to bring child support actions "to augment remedies to enforce parents' obligations to their children." Parentage of I.A.D., 131 Wn. App. 207, 217, 126 P.3d 79 (2006) (citing Moore v. Moore, 20 Wn. App. 909, 913, 583 P.2d 1249 (1978)). RCW 74.20.220(3) authorizes the prosecuting attorney to "petition the court for modification of a superior court order when the office of support enforcement is providing support enforcement services."

Schreiner does not dispute that the office of support enforcement was providing Ewing with services. Nor does he demonstrate that any State official acted inappropriately or that he has suffered any prejudice from the State's involvement.

Schreiner fails to demonstrate any error regarding the State's participation in the case.

Next, Schreiner argues that the trial court erred by failing to base its determination of the parties income for purposes of child support on income tax records. But the record demonstrates that Schreiner refused to produce any evidence at the arbitration. And he fails to argue or demonstrate that the arbitrator's use of Employment Security Department records in any way prejudiced him. Schreiner fails to establish grounds for relief.

Finally, Schreiner requests the return of all the child support he has paid in the past and make-up time with his children. Because he fails to demonstrate that such relief is required or justified, we deny these requests.

Similarly, Schreiner requests an award of attorney fees but he presents no argument or citation to authority regarding the grounds for fees. We therefore deny his request for attorney fees on appeal. Wilson Court Ltd. P'ship v. Tony Maroni's, Inc., 134 Wn.2d 692, 710 n.4, 952 P.2d 590 (1998).

Affirmed. For The Court, /s/

JUDGE

FILED
SUPREME COURT
STATE OF WASHINGTON
2009 JUN-3 A 8:46
BY RONALD CARPENTER
/S/
CLERK

THE SUPREME COURT OF WASHINGTON

In re:	)	NO. 82668-4
	)	
KRISTI L. EWING,	)	
Respondent,	)	ORDER
	)	
and	)	
	)	
BRIAN SCHREINER,	)	C/A NO. 60462-7-I &
Petitioner,	)	61261-1-I
	)	(consolidated)
STATE OF WASHINGTON,	)	
Involved Party.	)	

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen, Chambers, Fairhurst and Stephens, at its June 2, 2009, Motion Calendar, considered whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 3rd day of June, 2009.

For the Court /s/
CHIEF JUSTICE

FILED 02 MAR 22 P M. 1 32
PAM L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH.

SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH

In re the Marriage of:	)	NO. 01-3-02208-5
	)	
KRISTI EWING,	)	
Petitioner,	)	ORDER OF
	)	CHILD SUPPORT
and	)	(ORS)
	)	
BRIAN SCHREINER,	)	
Respondent.	)	Clerk's Action Required

I. JUDGMENT SUMMARY

[ ] Does not apply because no attorney's fees or back child support has been ordered.

[x] The judgment summary:

A.	Judgment creditor	Kristi Ewing
B.	Judgment debtor	Brian Schreiner
C.	Principal judgment amount (back child support) from 3/99 to 3/2002	$23,148
D.	Interest to date of judgment	$-0-
E.	Attorney's fees	$6,000
F.	Costs	$250.00
G.	Other recovery amount	$

H. Principal judgment shall bear interest at 12% per annum

I. Attorney's fees, costs and other recovery amounts shall bear interest at 12% per annum

J. Attorney for judgment creditor, James McCanna

K. Attorney for judgment debtor Pro Se

L. Other:

II. BASIS

2.1 TYPE OF PROCEEDING.

This order is entered pursuant to:

[X] a decree of dissolution, legal separation or a declaration of invalidity.

[ ] an order determining parentage.

[ ] an order for modification of child support.

[ ] a hearing for temporary child support.

[ ] an order of adjustment.

[ ] an order for modification of a custody decree or parenting plan.

[ ] Other

2.2 CHILD SUPPORT WORKSHEET.

The child support worksheet which has been approved by the court is attached to this order and is incorporated by reference or has been initialed and filed separately and is incorporated by reference.

2.3 OTHER:

III. FINDINGS AND ORDER

IT IS ORDERED that:

3.1 CHILDREN FOR WHOM SUPPORT IS REQUIRED. Kaitelynne Schreiner
Summer Schreiner

3.2 PERSON PAYING SUPPORT (OBLIGOR).

Name (first/last): Brian Schreiner

Birth date: 9/1/64

Service Address: [You may list an address that is not your residential address where you agree to accept legal documents.]

P.O. Box 3602
Lynnwood WA 98036

THE OBLIGOR PARENT MUST IMMEDIATELY FILE WITH THE COURT AND THE WASHINGTON STATE CHILD SUPPORT REGISTRY, AND UPDATE AS NECESSARY, THE CONFIDENTIAL INFORMATION FORM REQUIRED BY RCW 26.23.050. THE OBLIGOR PARENT SHALL UPDATE THE INFORMATION REQUIRED BY PARAGRAPH 3.2 PROMPTLY AFTER ANY CHANGE IN THE INFORMATION. THE DUTY TO UPDATE THE INFORMATION CONTINUES AS LONG AS ANY

MONTHLY SUPPORT REMAINS DUE OR ANY UNPAID SUPPORT DEBT REMAINS DUE UNDER THIS ORDER.

[ ] Monthly Net income: $ _____

[x] The income of the obligor is imputed at $2610 because:

[x] the obligor's income is unknown.

[ ] the obligor is voluntarily unemployed.

[ ] the obligor is voluntarily underemployed.

[ ] other:

3.3 PERSON RECEIVING SUPPORT (OBLIGEE):

Name (first/last): Kristi Ewing

Birth date: 6/20/1970

Service Address: (You may list an address that is not your residential address where you agree to accept legal documents.) James McCanna, Esq.
McCanna Law Firm, PLLC
110 Main Street Suite 103
Edmonds WA 98020

THE OBLIGEE PARENT MUST IMMEDIATELY FILE WITH THE COURT AND THE WASHINGTON STATE CHILD SUPPORT REGISTRY AND UPDATE AS NECESSARY THE CONFIDENTIAL INFORMATION FORM REQUIRED BY RCW 26.23.050.

THE OBLIGEE PARENT SHALL UPDATE THE

INFORMATION REQUIRED BY PARAGRAPH 3.3 PROMPTLY AFTER ANY CHANGE IN THE INFORMATION. THE DUTY TO UPDATE THE INFORMATION CONTINUES AS LONG AS ANY MONTHLY SUPPORT REMAINS DUE OR ANY UNPAID SUPPORT DEBT REMAINS DUE UNDER THIS ORDER.

[x]Monthly Net Income: $ 1427.25

[ ]The income of the obligee is Imputed at $_____because:

[ ] the obligees income is unknown.

[ ] the obligee is voluntarily unemployed.

[ ] the obligee is voluntarily underemployed.

[ ] other:

The obligor may be able to seek reimbursement for day care or special child rearing expenses not actualiy incurred. RCW 26.19.080.

3.4 SERVICE OF PROCESS.

SERVICE OF PROCESS ON THE OBLIGOR AT THE ADDRESS REQUIRED BY PARAGRAPH 3.2 OR ANY UPDATED ADDRESS, OR ON THE OBLIGEE AT THE ADDRESS REQUIRED BY PARAGRAPH 3.3 OR ANY UPDATED ADDRESS, MAY BE ALLOWED OR ACCEPTED AS ADEQUATE IN ANY PROCEEDING

TO ESTABLISH, ENFORCE OR MODIFY A CHILD SUPPORT ORDER BETWEEN THE PARTIES BY DELIVERY OF WRITTEN NOTICE TO THE OBLIGOR OR OBLIGEE AT THE LAST ADDRESS PROVIDED.

3.5 TRANSFER PAYMENT.

[x] The obligor parent shall pay $643.42 per month.

[ ] The obligor parent shall pay the following amounts per month for the following children:

TOTAL MONTHLY AMOUNT

[ ] The parents' combined monthly net income exceeds $7,000 and the court sets child support in excess of the advisory amount because:

[ ] If one of the children changes age brackets or terminates support, child support shall be as follows:

[ ] Other:

THE OBLIGOR PARENT'S PRIVILEGES TO OBTAIN OR MAINTAIN A LICENSE, CERTIFICATE, REGISTRATION, PERMIT, APPROVAL, OR OTHER SIMILAR DOCUMENT ISSUED BY A LICENSING ENTITY EVIDENCING ADMISSION TO OR GRANTING AUTHORITY TO ENGAGE IN A

PROFESSION, OCCUPATION, BUSINESS, INDUSTRY, RECREATIONAL PURSUIT, OR THE OPERATION OF A MOTOR VEHICLE MAY BE DENIED OR MAY BE SUSPENDED IF THE OBLIGOR PARENT IS NOT IN COMPLIANCE WITH THIS SUPPORT ORDER AS PROVIDED IN CHAPTER 74.20A REVISED CODE OF WASHINGTON.

3.6 STANDARD CALCULATION.

$643.42 per month. (See Worksheet line 15.)

3.7 REASONS FOR DEVIATION FROM STANDARD CALCULATION.

[x] The child support amount ordered in paragraph 3.5 does not deviate from the standard calculation.

3.8 REASONS WHY REQUEST FOR DEVIATION WAS DENIED.

[ ] Does not apply. A deviation was ordered.

[x] A deviation was not requested.

[ ] The deviation sought by the [ ]obligor [ ]obligee was denied because:

[ ] no good reason exists to justify deviation.

[ ] Other:

3.9 STARTING DATE AND DAY TO BE PAID.

Starting Date: 4/1/02

Day(s) of the month support is due: 5th day

3.10 INCREMENTAL PAYMENTS.

[ ] Does not apply.

[ ] This is a modification of child support. Pursuant to RCW 26.09.170 (8)(a) and (c), the obligation has been modified by more than 30 percent and the change would cause significant hardship. The increase in the child support obligation set forth in Paragraph 3.5 shall be implemented in two equal increments, one at the time of this order and the second on _____ [Date] six months from the entry of this order.

3.11 HOW SUPPORT PAYMENTS SHALL BE MADE. Select *either* Enforcement and Collection *or* Payment Processing Only:

[x] Enforcement and collection: The Division of Child Support provides support enforcement services for this case (this includes public assistance cases, cases in which a parent has requested services from DCS, and cases in which a parent signs the application for services from DCS on the bottom of the support order). Support payments shall be made to:

Washington State Support Registry
P.O. Box 45868 Olympia, WA 98504
Phone: 1-800-922-4306 or 1-800-442-5437

A party required to make payments to the Washington State Support Registry will not receive credit for a payment made to any other party or entity. The obligor parent shall keep the registry informed whether he or she has access to health insurance coverage at reasonable cost and, if so, to provide the health insurance policy information.

3.12 WAGE WITHHOLDING ACTION.

Withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the obligor parent at any time after entry of this order unless an alternative provision is made below: If the court orders immediate wage withholding in a case where Division of Child Support does not provide support enforcement services, a mandatory wage assignment under Ch.26.18 RCW must be entered and support payments must be made to the Support Registry.]

[ ] Wage withholding, by notice of payroll deduction or other income withholding action under Chapter 26.18 RCW or Chapter 74.20A RCW, without further notice to the obligor, is delayed until a payment is past due, because:

[ ] the parties have reached a written agreement that the court approves that provides for an alternate arrangement.

[ ] the Division of Child Support provides support enforcement services for this case [see 3.11] and there is good cause [as stated below under "Good Cause"] not to require immediate income withholding which is in the best interests of the child and, in modification cases, previously ordered child support has been timely paid:

[ ] the Division of Child Support does not provide support enforcement services for this case [see 3.11] and there is good cause [as stated below under "Good Cause"] not to require immediate income withholding:

3.13 TERMINATION OF SUPPORT.

Support shall be paid:

[ ] provided that this is a temporary order, until a subsequent child support order is entered by this court.

[ ] until the child(ren) reach(es) the age of 18, except as otherwise provided below in Paragraph 3.14.

[ ] until the child(ren) reach(es) the age of 18 or as long as the child(ren) remain(s) enrolled in high school, whichever occurs last, except as otherwise provided below in Paragraph 3.14

[ ] after the age of 18 for_____[Name]_____ who is a dependent adult child, until the child is capable of self-support and the necessity for support ceases.

[x] until the obligation for post secondary support set forth in Paragraph 3.14 begins for the child(ren).

[ ] Other:

3.14 POST SECONDARY EDUCATIONAL SUPPORT.

No post secondary educational support shall be required. The right to petition for post secondary support is reserved, provided that the right is exercised before support terminates as set forth in paragraph 3.13.The parents shall pay for the post secondary educational support of the child(ren).

3.15 PAYMENT FOR EXPENSES NOT INCLUDED IN THE TRANSFER PAYMENT.

[ ] Does not apply because all payments, except medical, are included in the transfer payment.

[x] The mother shall pay 36% and the father 64% (each parent's proportional share of income from the Child Support Schedule Worksheet, line 6) of the following expenses incurred on behalf of the children listed in Paragraph 3.1:

[x] day care.

[ ] educational expenses.

[ ] long distance transportation expenses.

[ ] other:

Payments shall be made to [ ] the provider of the service [x] the parent receiving the transfer payment.

3.16 PERIODIC ADJUSTMENT.

[ ] Does not apply.

[ ] Child support shall be adjusted periodically as follows:

[ ] Other:

3.17 INCOME TAX EXEMPTIONS.

[ ] Does not apply.

[x] Tax exemptions for the children shall be allocated as follows:

[ ] The parents shall sign the federal income tax dependency exemption waiver.

[ ] Other:

3.18 MEDICAL INSURANCE FOR THE CHILDREN LISTED IN PARAGRAPH 3.1.

Unless one or more of the boxes below are checked, each parent shall maintain or provide health insurance coverage if:

(a) Coverage that can be extended to cover the child(ren) is or becomes available to each parent through employment or is union-related; and (b) The cost of such coverage for the mother does not exceed $81 (25 percent of mother's basic child support obligation on Worksheet Line 7), and the cost of such coverage for the father does not exceed $152 (25 percent of father's basic child support obligation on Worksheet Line 7).

[ ]The parent below shall maintain or provide health insurance coverage if coverage that can be extended to cover the child(ren) is or becomes available to that parent through employment or is union-related and the cost of such coverage does not exceed $_____ (25 percent of that parent's basic child support obligation on Worksheet Line 7).

[ ] Mother [ ] Father

[ ]The parent below shall maintain or provide health insurance coverage if coverage that can be extended to cover the child(ren) is or becomes available to that parent through employment or is union-related even if such coverage exceeds $_____ (25 percent of that parent's basic child support obligation on Worksheet Line 7).

[ ] Mother [ ] Father

[ ] The parent below is not obligated to provide health insurance coverage:

[ ] Mother [ ] Father

This parent is not obligated to provide health insurance coverage because:

[ ]The other parent provides insurance coverage

[ ] Other:

The parent(s) shall maintain health insurance coverage, if available for the children listed in paragraph 3.1, until further order of the court or until health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment. A parent who is required under this order to provide health insurance coverage is liable for any covered health care costs for which that parent receives direct payment from an insurer. A parent who is required under this order to provide health insurance coverage shall provide proof that such coverage is available or not available within 20 days of the entry of this order to the physical custodian or the Washington State Support Registry if the parent has been notified or ordered to make payments to the Washington State Support Registry.

If proof that health insurance coverage is available or not available is not provided within 20 days, the obligee or the Department of Social and Health Services may seek direct enforcement of the coverage through the obligor's employer or union without further notice to the obligor as provided under Chapter 26.18 RCW.

3.19 EXTRAORDINARY HEALTH CARE EXPENSES.

The OBLIGOR shall pay .646% of extraordinary health care expenses (the obligor's proportional share of income from the,Child Support Schedule Worksheet, line 6), if monthly medical expenses exceed $48 (5% of the basic support obligation from Worksheet line 5).

3.20 BACK CH1LD SUPPORT.

[ ] No back child support is owed at this time.

[ ] Back child support that may be owed is not affected by this order.

[x] The obligee parent is awarded a judgment against the obligor parent in the amount of $23,148 for back child support for the period from 3/99 to 3/02.

[ ] Other:

3.21 BACK INTEREST.

[x] No back interest is owed at this time.

[ ] Back interest that may be owed is not affected by this order.

[ ] The obligee parent is awarded a judgment against the obligor parent in the amount of $ _____ for back interest for the period from _____to_____.

[ ] Other:

3.22 OTHER:

Dated:3-22-02 _____/s/_____

Judge

APP. 04

FILED 02 MAR 22 P.M 1:32
PAM L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

Kristi Ewing,	)	Clerk's Action Required
Petitioner.	)	
	)	No. 01-3-02208-5
and	)	Order on Petitioner's
	)	Motion and Order Denying
Brian Schreiner,	)	Respondent's Motion for
Respondent.	)	Continuance
_____	)	

IT IS HEREBY ORDER: The Respondent has failed to complete the For Kids Sake seminar, ordered by commissioner Bedle on October 26, 2002. Pursuant to Petitioner's written and oral motion based on a violation of SCLSPR 94.04(c)(5)(D), the respondent's pleadings are stricken, he is precluded from seeking any affirmative relief in this trial, and the court awards attorney fees enumerated in its Decree of Dissolution. The respondent's motion for a continuance is denied. The oral record is hereby incorporated into this order. Done in open court this date, 3/22/02

___/s/____

Judge

APP. 05

FILED 02 APR 29 A.M. 11:50
PAM L. DANIELS
COUNTY CLERK
SNOHOMISH CO WASH

SUPERIOR COURT
OF THE STATE OF WASHINGTON
COUNTY OF SNOHOMISH

In Re the Marriage of:	) Case No: 01-3-02208-5
KRISTI EWING	) ORDER DENYING
Petitioner,	) RESPONDENT'S MOTION
	) TO VACATE AND
	) MOTION FOR A
NEW	) TRIAL
BRIAN SCHREINER,	)
Respondent.	) Clerks Action Required

FINDING

The court having considered the motions of respondent to vacate and for a new trial and the response of the petitioner hereby finds that the respondent has failed to comply with the requirements of SCLSPR 94.04(5)(D),has failed to comply with requirements of SCLCR 59 and CR 60, as to specific allegations of errors and facts; and has provided no supporting affidavit in support of either motion.

ORDER

THEREFORE, the court, being fully advised in the premises hereby denies Respondent's Motion to Vacate and Motion for a New Trial.

Dated this 29 day of April 2002. /s/

Judge

APP. 06

IV-D#977286

SUPERIOR COURT OF WASHINGTON

COUNTY OF SNOHOMISH

In re:	)	NO: 01-3-02208-5
Kristi Ewing	)	
Petitioner	)	STATE'S PETITION
	)	FOR SUPPORT
and	)	MODIFICATION
	)	
Brian Schreiner	)	
Respondent	)	
	)	
State of Washington,	)	
Involved Party.	)	

I. BASIS

1.1 PLACE OF RESIDENCE.

Kristi Ewing resides in Snohomish County, Washington.

Summer L Schreiner resides in Snohomish County, Washington.

Katelynne L Schreiner resides in Snohomish County, Washington.

Brian Schreiner resides in Snohomish County, Washington.

1.2 JURISDICTION OVER PARENTS.

This court has jurisdiction over the parents for the reasons that follow:

There is a Washington Order of Child Support.

Both parties presently reside in the State of Washington.

1.3 MOST RECENT SUPPORT ORDER

The most recent support order was entered in Snohomish County, Washington on April 8, 2002.

The order requires Brian Schreiner to pay $643.42 per month for the support of:

Summer L Schreiner, Katelynne L Schreiner

1.4 LEGAL BASIS FOR STATE ACTION.

The State has started this action at the request of Kristi Ewing, as required by 42 U.S.C. §666(a)(10)(A) and as authorized by RCW 74.20.220.

1.5 REASONS FOR MODIFYING CHILD SUPPORT.

The order of child support should be modified for the following reasons:

The previous order was entered more than two years ago and there has been a change in the income of the parents.

The previous order was entered more than a year ago and:

The child has moved to a new age category for support purposes.

The previous order was entered more than a year ago and:

An automatic adjustment of support should be added consistent with RCW 26.09.100.

Either or both parents should be required to maintain or provide health insurance coverage consistent with RCW 26.09.105.

1.6 STARTING DATE OF MODIFIED ORDER. The starting date of the modified child support order should be the date on which this petition is filed.

1.7 OTHER: The right to petition for post-secondary educational support should be reserved until support terminates.

II. RELIEF REQUESTED

The court should modify the order of child support by requiring either or both parents to maintain or provide health insurance coverage consistent with RCW 26.09.105

for the children, if not previously ordered, and by:

Ordering child support payments which are based upon the Washington State Child Support Schedule. A copy of the child support worksheets are filed with this action.

Ordering repayment or credit for overpaid child support since the date of filing this petition.

Ordering payment of underpaid child support since the date of filing this petition or entering a judgment in that amount.

Requiring a periodic adjustment of support.

Requiring child support to continue beyond the children's eighteenth birthday to allow the children to complete high school.

Reserving the right to petition for post-secondary educational support until support terminates.
Ordering the payment of uncovered health care expenses.
Awarding a tax exemption for the children.
Reserving the payment of attorney's fees and costs.

I declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge, based on the information available at this time.

SIGNED at Everett, Washington on 10-16-06.

/s/

Barbara McClintock
Deputy Prosecuting Attorney
WSBA Number: 21523

FILED
2007 JUL 18 PM 4:23
PAM L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH.

SUPERIOR COURT OF WASHINGTON

COUNTY OF SNOHOMISH

In re:	)	NO: 01-3-02208-5
Kristi Ewing	)	
Petitioner	)	
	)	ORDER
and	)	
	)	
Brian Schreiner	)	
Respondent	)	
	)	
State of Washington,	)	
Involved Party.	)	

IT IS HEREBY ORDERED: Respondent's "Motion to read all pleadings," "motion to claim and exercise constitutionally protected rights, nunc pro tunc," and "Notice and demand to vacate a void judgment for lack of subject matter jurisdiction" are all denied.

Petitioner's

request to limit Respondent's ability to file motions is denied because there is no such motion before the court, nor is there a motion to have this matter pre-assigned to a single jurist.

Done in open court this date: 18 July, 2007

/s/
Judge

APP. 08

SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH

In re Marriage of:	)	NO: 01-3-02208-5
KRISTI EWING	)	
Petitioner	)	
and	)	ARBITRATION
BRIAN SCHREINER	)	DECISION
Respondent	)	
And	)	
STATE OF WASHINGTON,	)	
Involved Party.	)	

This matter came on for hearing on August 21, 2007. The State was represented by legal counsel. The petitioner/ mother, Kristi L. Ewing, appeared pro se and fully participated, including providing testimony.

The respondent/father, Brian James Schreiner, appeared pro se for the bearing and was present and participated fully in arguing various issues and cross examining the petitioner and examining State's counsel (David Mace) as a witness. Mr. Schreiner refused to participate insofar as he refused to take the oath as a witness and chose not to present any testimony or evidence. The respondent/father stated his position that be objected overall to the arbitration proceeding and that the State did not have standing to bring this action. The arbitrator ruled that the arbitrator did not have authority to address any issues regarding standing and noted that the Superior Court had already addressed that issue by determining that the State did have standing. Mr. Schreiner questioned the arbitrator several times during the proceeding, as to whether his presence constituted "participation" although he refused to take the oath or submit any evidence or testify.

The issue for determination in this arbitration was modification of the April 8, 2002 Order of Child Support based on more than two years having passed

and changes in parental income, and that both children subject to the support order had matured past age 12.

The two children subject to child support are Summer L. Schreiner, now age 16, and Kaitelynn L. Schreiner, now age 14. Both children have primarily resided with their mother at all times material.

The Order of Child Support subject to modification entered on April 8, 2002 upon the dissolution of the parties' marriage. This order determined the father's imputed net income at $2,610/mo., the mother's net income at $1,427/mo., ordered a standard calculation transfer payment by the father to the mother of $643/mo., ordered parents to share day care expenses in proportion to net income (mother 36%, father 64%), determined a start date of April 1, 2002 and termination upon any post secondary support which was reserved, standard provisions regarding provision of health insurance and payment of extraordinary health care expenses.

Upon the mother's request from July 2006, on November 1, 2006, the State filed this action to modify child support. The State properly served Mr. Schreiner with the pleadings, as described in the Return of Service filed on November 1,2006.

On December 20, 2006, the State moved for summary judgment or alternatively for a temporary order of child support. On February 16, 2007, Commissioner Weiss entered a Temporary Order of Child Support, adopting the State's proposed worksheets which determined, based on Employment Security reported income the father's net income at $4,020/mo., the mother' net income at $1,812/mo., a standard calculation transfer payment of $1,107/mo. to be paid by the father to mother through DCS with wage withholding, starting November 1, 2006. Commissioner Weiss directed no incremental increase based on the father's objection to it; and Ordered the matter to arbitration.

On June 1, 2007, Commissioner Weiss entered an order specifically determining that the State had standing in this matter, striking the February 15, 2007 Temporary Order of Child Support. On August 16,2007, Commissioner Weiss entered another order denying Mr. Schreiner's motion to vacate, including ordering "the arbitration shall go forward."

The State's Prehearing Statement, including pleadings in this matter from the court file, Employment Security information gathered by the State regarding the income of both Mr. Schreiner and Ms.

Ewing, and the State's revised proposed worksheets based on the updated income information, was admitted over Mr. Schreiner's objection. Mr. Schreiner's objection was based on his overall objection to the arbitration proceeding and not on anything specific.

The State called Ms. Ewing, who testified regarding her financial circumstances; Mr. Schreiner cross examined. As Mr. Schreiner refused to be placed under oath to testify, the State did not elicit any testimony from Mr. Schreiner. Mr. Schreiner did not offer any testimony or exhibits on his own behalf. He called Mr. Mace as a witness, who agreed to testify regarding relevant issues; Mr. Schreiner's only question to Mr. Mace was irrelevant and the objection to it sustained.

From all of the evidence available, the father's earned income from his employment in construction is determined for child support purposes in this matter to be $5,205/mo./gross. This is based on his actual total earnings during 2006 as his employer reported them to Employment Security Department of $62,461.01, on a full time employment (2051 hrs.). The mother's income is determined to be $2,000/mo./ gross from her actual employment as a bartender, and partially imputed due to her voluntary underemployment of part time

employment The mother's actual total earnings during 2006 as her employers reported them to Employment Security Department are $12,003, on a part time employment (1143 hrs.). The mother testified she sometimes worked part time and sometimes worked two jobs, depending on what was available. The mother testified she worked for minimum wage or marginally more, plus variable tips. Her 2004 and 2005 taxable income per her tax returns was approx. $13,500/year. Use of 2006 earned income for the parties appears appropriate as that is when the action was requested by the mother and initiated by the State. Income information during the same interval for both parents is used to maintain consistency between the parents. There are no significant changes since then that would materially affect the analysis.

The parties proposed no change to the annual alternation of tax dependency exemption for both children. For child support computation purposes, the father's tax exemption status should be assumed to be single and three (himself & 2 children) exemptions, and the mother's tax exemption status should be assumed to be head of household and three (herself & 2 children) tax dependency exemptions.

The father's net income is therefore determined to be S4,IO5.99/mo. and the mother's net income is $1,847.00/mo. From these net incomes, the father's standard calculation based on the maximum advisory table is $1,141.26/mo.

The father should be ordered to pay the standard transfer payment of$1,1426/mo.

The start date for the modified Order of Child Support should be November 1, 2006, the month in which the action was flied. The father should be provided credit for all payments made.

Payment should be made through DCS with automatic wage withholding.

The sharing of child care expenses should be omitted, as there no longer is any child care expense for the children.

No change should be made to the provisions in the 2002 Order of Child Support as to termination of support, post secondary educational support, tax exemption allocation, requirement for both parents to provide health insurance if employed or through union not exceeding 25% of the support obligation.

Revised percentages and 5% threshold amount should be used in the order regarding extraordinary

health care expenses. The following language regarding definition of extraordinary health care expenses and payment should be adopted to minimize any conflict and provide clarity as to payment and enforcement:

"Extraordinary health care expenses shall mean all uninsured health care expenses, including deductible payments and co-payments. Health care shall mean medical, dental, orthodontia, counseling (mental health), vision (including glasses) and prescription drug expense. The amount of expense for each month shall be determined by date of the service. Payment is due within 10 days of service of the documented request for payment Service shall be by regular mail to the last known address of the father. This paragraph may be administratively enforced in case of delinquency."

Dated: August 21, 2007

/s/

LEE B. TINNEY

WSBA #11242

Arbitrator

09

FILED SEP 10 2007
PAM L. DANIELS
SNOHOMISH COUNTY CLERK
EX-OFFICIO CLERK OF THE COURT

SUPERIOR COURT OF WASHINGTON

COUNTY OF SNOHOMISH

Kristi Ewing	)	NO: 01-3-02208-5
Petitioner	)	REQUEST FOR TRIAL
	)	DENOVO, SEALING
and	)	OF THE AWARD AND
	)	NOTE FOR TRIAL
Brian Schreiner	)	SETTING
Respondent	)	
	)	
State of Washington,	)	
Involved Party.	)	

REQUEST FOR TRIAL DE NOVO

A trial de novo is requested in this case pursuant to MAR 7.1 and SCLMAR 7.1. The de novo appeal is brought against the following party(s):

Kristi Ewing, Barbara McClintock, David Mace, Washington State, Snohomish County

I request that the arbitration award and any memorandum decision filed by the arbitrator be sealed by the Clerk pursuant to SCLMAR 7.2

A jury demand and fee [ ]have [x]have not been previously filed with the Clerk pursuant to CR 38. A jury trial is scheduled for_____N/A_____(mm/dd/yyyy). If no trial is currently set, the Note for Trial Setting below MUST be completed.

USE THE FORM BELOW TO SET A TRIAL DATE

I hereby affirm that although this case has been arbitrated it is still at issue; that no affirmative pleading remains unanswered; that to my knowledge no other parties will be served with summons; and that the case in all respects is ready for trial.

On Sept. 14, 2007 at 10:00 a.m. this case will be presented to Court Administration for a trial setting.

Type of case:	Estimated trial time:
child support	3 day(s)

NOTE: File the original of this form with the Clerk and pay the $250.00 trial de novo fee; serve a copy on the Director of Arbitration, Room C-502, Court Administration Office and on all other parties.

Signed:____/s/____ Printed name: Brian Schreiner

Dated: 09-10-07 Phone:_____

Address: 21702 8th Pl. W. Bothell WA

Attorney for: [ ] Plaintiff [x] Respondent

Certificate of Mailing;

I certify that I mailed a copy of this document to the attorney(s)/party(s) listed hereon postage prepaid, on the 10th day of September 2007.

Signed_____/s/_____

Printed name: Brian Schreiner

Other attorney(s) and/or Parties:

Name:	Kristi Ewing, Jennifer Gogert
Address:	3411 Colby Ave Everett WA
Phone:	425-259-2222
Attorney for:	Plaintiff

Name:	Snohomish County Prosecutor, Barbara McClintock
Address:	3000 Rockefeller Everett WA
Phone:	
Attorney for:	State

FILED NOV 01 2007
PAM L. DANIELS
SNOHOMISH COUNTY CLERK
EX-OFFICIO CLERK OF THE COURT

IV-D#977286

SUPERIOR COURT OF WASHINGTON

COUNTY OF SNOHOMISH

In re:	)	NO: 01-3-02208-5
Kristi Ewing	)	
Petitioner	)	ORDER STRIKING
and	)	RESPONDENTS
Brian Schreiner	)	REQUEST FOR
Respondent	)	TRIAL DENOVO
	)	
State of Washington,	)	
Involved Party.	)	

I. BASIS

This matter coming regularly before the Court pursuant to the State's Motion to strike Respondent's request for trial de novo, the Court having examined the records and pleadings herein, having heard argument on the motion, and being fully advised in the premises, the court finds:

II. FINDINGS AND CONCLUSIONS

That Respondent attended the arbitration held on August 21, 2007.

That the 20 day deadline in which to comply with MAR 7.1 in requesting a trial de novo expired on September 11, 2007.

That Respondent mailed notice of his request for trial de novo to the parties on Sept.10, 2007. Service, therefore, is deemed to have been completed on September 13, two days after the expiration of the deadline.

Respondents failure to comply with the provisions of MAR 7.1 defeat Respondent's request for trial de novo. His request should, therefor, be denied and an order on the arbitrator's award should be entered.

IV. ORDER

IT IS ORDERED that:

4.1 The State's motion to strike Respondent's request for trial de novo is granted.

4.2 An Order of Child Support that accurately reflects the arbitrator's award of August 22, 2007 should be entered.

4.3 The child support worksheet which has been approved by the court is attached to the Order of Child Support signed by the court on 11/1/07 and both are incorporated by reference as part of this order.

DONE IN OPEN COURT this 1st day of Nov. 2007.

/s/

JUDGE

APP. 11

State of Washington Division of Child Support

Disbursement History

11/28/2007 11:28:30 AM-2644; IV-D Case#: 977286

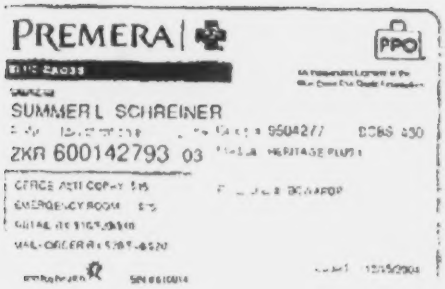
NCP: SCHREINER, BRIAN JAMES

CP: EWING, KRISTI L

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PREMERA

PPO

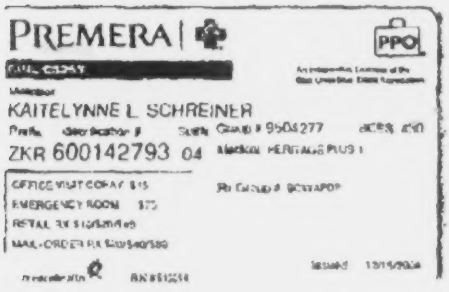
SUMMER L SCHREINER

ZKR 600142793 03

HERITAGE PLUS

OFFICE VISIT COPAY $15

EMERGENCY ROOM $75


PREMERA

PPO

KAITELYNNE L SCHREINER

ZKR 600142793 04

HERITAGE PLUS

OFFICE VISIT COPAY $15

EMERGENCY ROOM $75

BEST AVAILABLE COPY